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April 12, 2002

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Opposition to Proposed Merger of EchoStar Communications and Hughes Electronics, FCC Docket No. 01-348*

Dear Attorney General Ashcroft and Chairman Powell:

On behalf of The Latino Coalition and the Hispanic Business Roundtable, two longstanding and broad-based organizations established to address policy issues that directly affect the well-being of Hispanic Americans, we would like to express our strong opposition to the proposed merger of EchoStar Communications Corporation and Hughes Electronics Corporation. If allowed to proceed, this merger would combine the only two sources of multichannel video programming and broadband Internet access available in many areas, creating a monopoly in these two vital services in large portions of the country. Moreover, since only satellite operators provide true multichannel video services to Spanish-language markets, a merger would create a both a monopoly for certain audiences in all markets *even if* there is a cable operator present as well as a monopsony in the purchase of Spanish-language programming that will inevitably decrease the output of such programming. Allowing EchoStar to become a monopoly gatekeeper and monopsony purchaser for these services would likely lead to an increase in prices and decrease in innovation and diversity. Both the Department of Justice and the Federal Communications Commission should act quickly and decisively to block the proposed transaction.

According to the U.S. Census conducted in 2000, Hispanics comprise about 12.5% of the nation's population. However, because Hispanics are dispersed across the country, they may not have enough presence to influence service providers in most local markets. Many cable systems offer no Spanish-language programming, and even large urban systems may offer only one or a small handful of such channels. Satellite services are inherently able to cover large areas, and therefore satellite operators are able to aggregate potential customers from dispersed populations in a way that makes more foreign language and other niche services economically compelling. For that reason, Direct

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Broadcast Satellite ("DBS") operators are a primary source of Spanish-language news, information, and entertainment for Hispanics nationwide – and the only source of multichannel Spanish-language programming virtually everywhere. Accordingly, continued access to a full and varied menu of Spanish-language DBS programming at reasonable prices is a primary concern for the Hispanic community.

EchoStar and Hughes currently offer competing DBS video programming services that are available throughout the United States, including those areas not served by cable. Competition between EchoStar's Dish Network and Hughes' DirecTV offering has led to better service and lower prices. For example, EchoStar and DirecTV have competed for Hispanic audiences by increasing the number of Spanish-language channels available and packaging them in user-friendly packages – albeit in a premium tier. Significantly, while both DBS operators offer far more Spanish-language programming than even the largest cable systems, the DirecTV Para Todos package offers 25 Spanish-language video channels compared to the Dish Latino offering of only 16 such channels. The proposed merger would end DBS competition and create a single DBS operator for America – a perfect monopoly in areas unserved by cable, a virtual monopoly for those dependent upon Spanish-language services not provided by cable, and a monopsony purchaser in the market for Spanish-language programming. And because EchoStar and DirecTV hold the licenses to all of the DBS channels allocated to the United States that are capable of serving the entire country, there is little chance that a new entrant will emerge to challenge this DBS powerhouse.

Thus, unless the merger is blocked, EchoStar will become the gatekeeper with complete control over the available video options for millions of Hispanics and other underserved consumers across the country. To date, EchoStar's Spanish-language offerings have been far inferior to DirecTV's. If it were to exercise monopsony power in the Spanish-language programming market in this country, EchoStar would further depress the output of such programming, with predictable decreases in quality and diversity.

Judging by EchoStar's recent behavior, removing the spur of competition could be a disaster for the Hispanic community. Earlier this year, the "carry one, carry all" provisions of the Satellite Home Viewer Improvement Act ("SHVIA") came into force, such that a DBS operator carrying any local station in a given market must carry all other stations that elect carriage. Although the statute and the Commission's implementing orders clearly prohibit discriminatory treatment of local stations, EchoStar brazenly adopted a strategy of placing what it perceived to be less desirable stations on its "wing" satellites – which can only be viewed with a second receiving dish. EchoStar consistently placed Spanish-language stations, such as those affiliated with Telemundo and Univision, on these wing satellites, effectively relegating them to second-class status in their own markets. EchoStar saw nothing wrong with this arrangement. The Commission, however, recently and authoritatively rejected this practice as a violation of both federal law and Commission rules.¹ The Hispanic community is justifiably concerned that, without a competing DBS operator to keep it in check, EchoStar would take other steps that could disadvantage Hispanic viewers for which it would offer the only multichannel video service available.

¹ See *National Association of Broadcasters and Association of Local Television Stations, Declaratory Ruling and Order*, DA 02-765 (Media Bur., April 4, 2002).

Competition between DBS operators has also had other salutary effects. For example, the price of satellite receiving equipment has plummeted from \$799 in 1994 (prior to EchoStar's entry into the market) to \$99 or even free today. The basic monthly subscription price for DBS service has barely risen over that same period, while both DBS operators have increased the number of video channels offered from about 100 to over 500 and have also introduced interactive features, sports packages, carriage of local broadcast stations, and a wide range of pay-per-view options. The relentless push of competitive forces has driven this evolution toward lower prices and better services.

The proposed merger would change this competitive dynamic, and even EchoStar has recognized the potential anti-competitive impact. In an effort to salvage the transaction, it has made two key proposals to assuage regulatory concerns. The first proposal is a nationwide pricing scheme so that rural areas pay the same rates for DBS services that urban areas do. The second is a promise to carry local broadcast stations in all 210 markets in the country. Upon closer examination, neither of these proposals can possibly justify a merger to monopoly.

The nationwide pricing proposal is both fatally flawed conceptually and unworkable in reality. Both EchoStar and DirecTV have separate prices for their Spanish-language packages – packages for which there are no comparable terrestrial competitors. Thus, for Hispanic viewers who would have no other multichannel Spanish-language option, EchoStar's promise means only that all Spanish-language viewers nationwide can be uniformly overcharged once the competitive pressure from a competing DBS service has been removed. More generally, a nationwide pricing policy would require extensive and ongoing government intervention in a market where competitive forces – a far preferable mechanism -- currently regulate pricing. As EchoStar's Chairman, Charles Ergen, has admitted, the "nationwide" pricing would be subject to the merged entity's ability to offer promotions on equipment and other aspects of the service that vary depending upon the market – variances that are not likely to benefit Hispanics, rural, and other underserved consumers. In addition, a nationwide pricing policy would do nothing to address the non-price benefits of the current competitive market for DBS services – such as technological innovation, quality of services, and customer care – or to offset EchoStar's monopsony power in the Spanish-language programming market. These non-price benefits would be lost in the non-competitive marketplace that the merger would establish for millions of Americans.

EchoStar's second promise – using the companies' combined spectrum resources to deliver the signals of local broadcast stations in all 210 markets – is also illusory. First, there is no technological justification for viewing this promise as a "benefit" available only through merger. As an expert witness hired by the Department of Justice in defense of the Commission recently demonstrated, both EchoStar and DirecTV could each independently carry all of the broadcast stations in the entire country using only a fraction of the DBS capacity they each already hold. That expert has reiterated and refined his analysis in the Commission's merger proceeding, where he has been supported by two other experts in satellite engineering who have reached the same conclusion. Second, EchoStar continues to pursue its court challenges to the SHVIA, and all of its promises of local-into-local carriage are carefully phrased to avoid an absolute commitment. For example, in a petition for certiorari to the Supreme Court, EchoStar admitted in a footnote that it would not carry all stations in all 210 markets if it won its appeal, but rather would retain discretion to determine which stations in each market would be carried. Third, as discussed above, EchoStar has demonstrated that it will circumvent federal law and Commission rules on local carriage. Why should anyone expect it to adhere to a promise made to win regulatory approval of the merger once

such approval is in hand? While we would welcome the carriage of additional local-into-local service, there is no reason why the nation must accept a monopoly in order to achieve that goal.

The proposed merger would also combine the only two satellite broadband access services -- EchoStar's Starband service and Hughes' DirecWay service -- which are the only broadband services currently available to the twenty-five percent of the nation's households that have no access to cable modem and digital subscriber line services. For these millions of Americans -- in which the Hispanic community is disproportionately represented -- satellite broadband is the only method for accessing the Internet and bridging the Digital Divide that threatens to separate the country into "have" and "have not" populations. In addition, both EchoStar and Hughes have been authorized to deploy next-generation broadband satellite services, and prior to the announced merger each company had promised it would independently launch and deliver such services using these assets. In fact, EchoStar Visionstar, a company controlled by EchoStar, is obliged under the terms of its license to launch a next-generation satellite next month. And because a single dish can be used for video services and broadband, the proposed merger would afford EchoStar and Hughes a very significant competitive advantage over potential satellite broadband rivals and enable the merged entity to leverage its monopoly in current satellite access services into next-generation services as well. The merger would place Hispanic consumers in rural and other underserved areas at the mercy of the pricing and service decisions of this monopoly over what is quickly becoming a necessity in today's digital world. There is no conceivable justification for creating a monopoly to achieve what two competing companies have already promised they will provide independently.

For all of these reasons, The Latino Coalition and the Hispanic Business Roundtable have concluded that the proposed merger of EchoStar and Hughes should be prevented, and we urge the Commission and the Department of Justice to step into the process as soon as possible to restore competitive conditions and ensure that DBS and satellite broadband remain robust and vibrant service offerings available to Hispanic American consumers nationwide.

Thank you for your consideration of our views on this issue.

Sincerely,

Robert Garcia de Posada, President
The Latino Coalition

Mario Rodriguez, President
Hispanic Business Roundtable